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**JAN 10 2007**

**OFFICE OF PETITIONS**

In re Application of	:	
Lasher et al.	:	DECISION ON PETITION
Application No. 09/512,734	:	UNDER 37 CFR 1.183
Filed: February 24, 2000	:	
Attorney Docket No. 112764.1101	:	

This is a decision on the petition under 37 CFR 1.47(a), filed on March 2, 2006, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.175 where it requires that a supplemental declaration be executed by the named inventors in a broadening reissue application.<sup>1</sup>

The petition is granted.

#### BACKGROUND

On February 24, 2000, the present application was filed as an application for reissue of U.S. Patent No. 5,720,154, by inventors Lasher, Rice, Szesko, and Mahar, who executed an original reissue declaration.

During the prosecution of the present application, the Office required a supplemental declaration directed to errors in the original patent which were corrected in the present application after the signing of the original reissue declaration.

According to the declaration supplied by applicant's legal representative, Irah Donner, together with the present petition, inventor Mahar could not be located to sign the supplemental declaration after diligent effort to find him.

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<sup>1</sup> Once an application has received a fully executed oath or declaration that has been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

## DECISION

35 U.S.C. 251, which is directed to reissue, does not address the signature requirements of a declaration in reissue. 37 CFR 1.172 requires that a reissue declaration be made (and signed) by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged. 37 CFR 1.175(b)(1), requires that:

“For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant.”

37 CFR 1.175(b)(1), taken in conjunction with 37 CFR 1.172, requires a supplemental declaration to be signed by all the inventors. This is because all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration. Thus, each oath and/or declaration must bear the appropriate signature of all the inventors. *See In re Hayes*, 53 USPQ2d 1222 (Comm’r Pat. 1999).

37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such waiver, and applicant has requested a waiver of the requirement that the 37 CFR 1.175(b)(1) supplemental declaration be signed by an inventor.

The instant petition is accompanied by an appropriate showing that inventor Mahar could not be located after diligent effort. Accordingly, the supplemental declaration of March 2, 2006, signed by inventors Lasher, Rice, and Szesko, will be accepted as though it was signed by joint inventors Lasher, Rice, Szesko and Mahar as required by 37 CFR 1.175(b)(1) taken in conjunction with 37 CFR 1.172. *See* MPEP 602.02. *See In re Hayes*, *supra*.

## CONCLUSION

The present petition to waive 37 CFR 1.172 is granted.

The application is being forwarded to Technology Center Art Unit 3721 for further prosecution.

Please direct any questions related to this decision to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



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